

HOUSE No. 3435

The Commonwealth of Massachusetts

PRESENTED BY:

Alice K. Wolf

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to help students stay in school.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Alice K. Wolf	25th Middlesex
Ms. Jehlen	Second Middlesex
Tom Sannicandro	7th Middlesex
Matthew C. Patrick	3rd Barnstable
Elizabeth A. Malia	11th Suffolk
Frank I. Smizik	15th Norfolk
Michael A. Costello	1st Essex
James H. Fagan	3rd Bristol
Gloria L. Fox	7th Suffolk
William N. Brownsberger	24th Middlesex
Denise Provost	27th Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
James J. O'Day	14th Worcester District
Robert L. Rice, Jr.	2nd Worcester
Barbara A. L'Italien	18th Essex
Katherine Clark	32nd Middlesex
Antonio F.D. Cabral	13th Bristol
Steven A. Tolman	Second Suffolk and Middlesex
Steven M. Walsh	11th Essex

Karen E. Spilka	Second Middlesex and Norfolk
Kay Khan	11th Middlesex
Sean Garballey	23rd Middlesex
Alice Hanlon Peisch	14th Norfolk
Steven J. D'Amico	4th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO HELP STUDENTS STAY IN SCHOOL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

WHEREAS: It was the intention of the General Court in 1993, by enacting the School Reform Act, to improve education throughout the Commonwealth of Massachusetts for *all* children;

WHEREAS: As part of this reform, the General Court enhanced the powers of school principals over their schools, in part, by vesting principals with the power to exclude students for misconduct that threatens the safety of other students and staff and is inconsistent with a safe learning environment;

WHEREAS: While many school principals have used these increased powers judiciously, others have been unduly influenced by community and other pressures to effectively impose a presumption of long-term exclusion for many acts of misconduct that do not seriously threaten student and staff safety and were not contemplated by the General Court in 1993 as appropriate bases for excluding students from school;

WHEREAS: This tendency has caused a tremendous increase in the use of long-term suspension and expulsion;

WHEREAS: Educational research strongly suggests that out-of-school exclusion is linked to students dropping out of school;

WHEREAS: Students who drop out of school earn and accrue substantially less in wages, pay less in taxes, and, left with fewer options, are more likely to engage in criminal activity than high school graduates, taxing the resources of this Commonwealth;

WHEREAS: Suspension and expulsion are visited disproportionately upon students of color, often for the same rule infractions that result in lesser discipline for non-minority students, which tends to perpetuate the gap in achievement between these students as well as racial stratification and inequities;

WHEREAS: For the reasons stated, it is a crucial matter of public policy to reduce the incidence of school suspension and expulsion and limit school exclusion to those students who truly represent a credible threat to school safety.

WHEREFORE: The General Court enacts the Act to Help Students Stay in School in order to: require fair procedures and set clearer standards governing suspension and expulsion; to prevent undue and unfair school exclusion; to prevent students from dropping out of school.

SECTION 1. Chapter 71 of the Massachusetts General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking Section 37H and inserting in place thereof the following section:—

Chapter 71: Section 37H. Policies relative to conduct of teachers or students; student handbooks

Section 37H. The superintendent of every school district shall publish the district's policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school buildings, the school facilities or on the school grounds or on school buses by any individual, including school personnel. Copies of these policies shall be provided to any person upon request and without cost by the principal of every school within the district.

Each school district's policies pertaining to the conduct of students shall include the following: disciplinary proceedings, including procedures assuring due process; standards and procedures for suspension and expulsion of students; non-exclusionary alternatives to suspension and expulsion; procedures pertaining to discipline of students with special needs; standards and procedures to assure school building security and safety of students and school personnel; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism, or violation of other student's civil rights. Codes of discipline, as well as procedures used to develop such codes shall be filed with the department of education for informational purposes only.

In each school building containing the grades nine to twelve, inclusive, the principal, in consultation with the school council, shall prepare and distribute to each student a student handbook setting forth the rules pertaining to the conduct of students. The school council shall review the student handbook each spring to consider changes in disciplinary policy to take effect in September of the following school year, but may consider policy changes at any time. The annual review shall cover all areas of student conduct, including but not limited to those outlined in this section.

Notwithstanding any general or special law to the contrary, all student handbooks shall contain the following provisions:

(a) Consistent with 20 U.S.C §7151, the Gun-Free Schools Act, any student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for one year,

provided that the superintendent may modify this expulsion to a lesser amount of time on a case-by-case basis, provided such modification is in writing, pursuant to the Gun-Free Schools Act

(b) Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, knowingly in possession of a dangerous weapon, as set forth in 18 USC § 930(g)(2); or who is found to be trafficking in a controlled substance as defined in G.L. c. 94C., including, but not limited to, marijuana, cocaine, and heroin, may be subject to expulsion for a maximum of 90 school days from the school by the principal, so long as the continued presence of the student in school is determined to have a substantial detrimental effect on the general welfare of the school in accordance with §37H¾.

(c) Any student who intentionally commits an assault and battery upon a principal, assistant principal, teacher, teacher's aide or other educational staff on school premises or at school-sponsored or school-related events, including athletic games, may be subject to expulsion for a maximum of 90 school days from the school by the principal, so long as the continued presence of the student in school is determined to have a substantial detrimental effect on the general welfare of the school in accordance with §37H¾.

(d) Any student who is charged with a violation of subsections (a), (b) or (c) that could result in an exclusion from school for a period in excess of 10 school days, shall be notified in writing, in the primary language of the home, of an opportunity for a hearing before the principal in accordance with § 37H¾.

(e) The student shall have the right to appeal the exclusion to the superintendent. The student shall notify the superintendent in writing of his request for an appeal no later than 30 calendar days following the effective date of the exclusion. The superintendent shall hold a hearing with the student and the student's parent or guardian within 5 calendar days of the student's request for an appeal, in accordance with § 37H¾, may overturn, alter or amend the prior decision, and shall render a decision on the appeal within 5 calendar days of the hearing. Such decision shall be the final decision of the school district with regard to the exclusion.

(f) When a student is expelled from a school district under the provisions of this section, other school districts within the commonwealth may review the previous expulsion decision under § 37H¾(5), shall consider the factors set forth in § 37H¾(4), and may exclude the student for the remainder of the period of expulsion, not to exceed 90 school days, if the superintendent of the other school district determines that the presence of the student in school would have a substantial detrimental effect on the general welfare of the school if admitted to the other district.

SECTION 1. Chapter 71 of the Massachusetts General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking Section 37H½ and inserting in place thereof the following section:—

Chapter 71: Section 37H½. Felony complaint or conviction of student; suspension; expulsion; right to appeal

Section 37H½. Notwithstanding the provisions of section eighty-four and sections sixteen and seventeen of chapter seventy-six:

(1) Upon a court's issuance of a criminal complaint charging a student with a felony or upon the issuance of a felony delinquency complaint against a student: involving the use of or attempt to use violence towards a person or involving the use of a dangerous weapon as set forth in G.L. c. 269, §§ (a) – (c); a sexual assault, as defined in G.L. c. 11, § 72K; or trafficking in a controlled substance as defined in G.L. c. 94C, the principal of a school in which the student is enrolled shall consider non-exclusionary alternatives to suspension and expulsion but may suspend such student if such principal, in accordance with § 37H¾, determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school, provided however that no suspension shall extend beyond the date upon which the court issues a disposition on the felony or felony delinquency charge, including a continuance without a finding or general continuance, or a maximum of 90 school days, whichever comes sooner.

The student shall have the right to appeal the suspension to the superintendent. The student shall notify the superintendent in writing of his request for an appeal no later than 30 calendar days following the effective date of the suspension. The superintendent shall hold a hearing with the student and the student's parent or guardian within 5 calendar days of the student's request for an appeal, in accordance with § 37H¾, may overturn, alter or amend the prior decision, and shall render a decision on the appeal within 5 calendar days of the hearing. Such decision shall be the final decision of the school district with regard to the suspension.

(2) Upon a student being convicted or found delinquent of a felony or felony delinquency involving the use of or attempt to use violence towards a person or involving the use of a dangerous weapon as set forth in 18 USC § 930(g)(2); a sexual assault as defined in G.L. c. 11, §72K; or trafficking in a controlled substance as defined in G.L. c. 94C, excluding a continuance without a finding, the principal of a school in which the student is enrolled shall consider non-exclusionary alternatives to suspension and expulsion and may, in accordance with § 37H¾, expel said student for a maximum of 90 school days if such principal determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.

(3) The student shall have the right to appeal the expulsion to the superintendent. The student shall notify the superintendent, in writing, of his request for an appeal no later than 30 calendar days following the effective date of the expulsion. The superintendent shall hold a hearing with the student and the student's

parent or guardian in accordance with § 37H¾ and may overturn, alter or amend the prior decision. Such decision shall be the final decision of the school district with regard to the expulsion.

(3) When a student is expelled under the provisions of this section, other school districts within the commonwealth may review the previous expulsion decision under § 37H¾(5), shall consider the factors set forth in § 37H¾(4) and may exclude the student for the remainder of the period of expulsion, not to exceed 90 school days, if the superintendent of the other district determines that the presence of the student in school would have a substantial detrimental effect on the general welfare of the school if admitted to the other district.

(4) Any student who is subject to exclusion under subsection (1) or (2) that could result in an exclusion from school for a period in excess of 10 school days, shall be notified in writing, in the primary language of the home, of an opportunity for a hearing before the principal in accordance with § 37H¾.

(5) Nothing under this section shall be construed to permit an exclusion in excess of 90 school days.

SECTION 1. Chapter 71 of the Massachusetts General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following section:—

Section 37H¾ (1) No student may be suspended or expelled for a period in excess of 10 school days for any single infraction, or for more than 10 school days for multiple infractions in any school year, under §§ 37H and 37H ½, or G.L. c. 76, § 17, or any other source of law or state and local policy or under any school or district handbook, unless the student's presence in school is determined by the applicable authority to present a substantial detrimental effect to the general welfare of the school as defined in subsections (4) and (5) of this section, in accordance with the procedures set forth in subsection (3) of this section. Nothing in this section shall be construed to alter existing procedural rights governing exclusion for 10 school days or less.

(2) No student may be suspended or expelled under subsection (1) of this section unless first provided written notice, in the primary language of the home, and a hearing for the purpose of determining whether exclusion of the student from school is supported by clear and convincing evidence that the student engaged in conduct subjecting the student to exclusion under subsection (1) and that suspension or expulsion is warranted under subsections (4) and (5) of this section.

(3) Hearings shall be held within 10 calendar days of any pre-hearing decision to suspend or expel, subject to subsection (5) of this subsection, provided however that the principal or superintendent may impose the exclusion prior to hearing by making a preliminary determination, set forth fully in writing, that there is substantial evidence that the student will engage in further conduct or incite others to conduct that is violent or seriously threatens violence if not immediately barred from school premises, in which

case, subject to subsection (5) of this section, hearing must be held within 5 calendar days of the infraction. Notice of hearing shall apprise students and parents of their rights at hearing, including:

- (a) that the student may have representation or legal counsel;
- (b) that the hearing will be memorialized by reliable means of audio or video/audio recording;
- (c) that the student shall be afforded the opportunity to present evidence and witnesses, as well as to cross-examine adverse witnesses, provided that testimony may be limited if the presiding officer at hearing specifically rules in writing, with reasons set forth in detail, that, the presence of a witness would endanger the witness' physical safety, in which case, the witness may testify by oral recording or in writing, provided that any such testimony is sworn under the pains and penalties of perjury;
- (d) a description of any evidence, inculpatory or exculpatory, of which the school district is aware bearing on the question of whether the student committed the alleged violation or whether the student's continued presence in school may have a substantial detrimental effect on the general welfare of the school, as set forth in this section, including the specific evidence that the school district will rely on, and copies of any documentary evidence;
- (e) that the student may request and shall be afforded a reasonable extension of time from the scheduled date of hearing in order to obtain representation or legal counsel or to otherwise prepare for hearing;
- (f) that a qualified interpreter will be provided, upon request, for any student, parent, or guardian whose first language is not English;
- (g) a list of available providers of free and low-cost legal assistance for students unable to afford representation or legal counsel;
- (h) notice that any statement of a student may be employed in the course of proceedings to determine the student's guilt or innocence of any adult criminal or delinquency charge. Such notice shall be read to the student at the beginning of any hearing under this section.

(4) No student's presence in school shall be determined to present a "substantial detrimental effect" to the general welfare of the school under any state or local policy or school or district handbook or §§ 37H and 37H¹/₂, unless the principal and, upon appeal from a principal's decision, the superintendent, or a school

committee acting under G.L. c. 76, § 17, in accordance with subsection (2) of this section, determines that clear and convincing evidence supports all the following conclusions:

- (a) that the student knowingly or intentionally engaged in one or more acts of misconduct satisfying the criteria as set forth in §§ 37H and 37H½, or, if the school district is proceeding under G.L. c. 76, § 17, violated school rules with violent conduct of comparable severity;
- (b) that there is a substantial likelihood that the student will engage in further conduct or incite others to conduct that is violent or seriously threatens violence so as to undermine the personal security that students and school staff need to learn and teach, or that it is likely that the student will use school premises to engage in an illegal business in controlled substances and promote illegal drug use;
- (c) that there is a clear nexus between the underlying misconduct and the general welfare of the school.

(5) Before determining that suspension or expulsion of a student eligible for exclusion under subsection (4) of this section is warranted, consideration shall be given to the following factors:

- (a) whether no-exclusionary alternatives to suspension and expulsion are appropriate;
- (b) whether the incident occurred in or within close proximity of the school;
- (c) whether other students from the school were involved;
- (d) whether the conduct was egregious and involved violence or threats of violence causing or capable of causing serious bodily harm;
- (e) the student's relative culpability given his or her chronological and developmental age and ability to understand the consequences of the misconduct;
- (f) whether the student has been identified or been referred for evaluation for special needs;
- (g) whether it was the student's intention to cause or create fear of serious bodily harm;
- (h) whether the student was the aggressor in any incident or acted out of a perceived defensive necessity, even if the student's response to this perception did not meet the legal definition of self-defense;
- (i) whether any violent incident involving physical conflict involved a weapon and/or more than two students as active participants (not including any student(s) intervening to cause the conflict to cease);

(j) whether the incident involved the use, as opposed to the possession, of a dangerous weapon, as set forth in G.L. c. 269, §§ (a) – (c), and whether the use or possession was or was intended to be defensive or offensive;

(k) whether the student’s prior school history suggests that similar conduct in the future is unlikely;

(l) whether other circumstances exist that suggests that similar conduct in the future is unlikely;

(m) with respect to drug infractions, the relative seriousness of the controlled substance involved and the quantity found in the student’s possession;

(n) whether any genuine threat posed by the student may be ameliorated by transfer of the student to another school or program within the district or to another district in accordance with G.L. c. 76, §§ 12, 12A, and 12B.

(6) Any principal who suspends or expels a student under state or local policy or a school or district handbook or §§ 37H and 37H½, and any superintendent who upholds such a determination, any school committee under G.L. c. 76, § 17, or any other person who presides over a suspension or expulsion hearing as described in subsection (1) of this section, must issue a written decision within 10 days of any hearing, or 5 days if the student is out of school pending the hearing decision, evidencing consideration of the requisite factors set forth in subsections (4) and (5) of this section, respectively, as well as any other relevant matter. The decision shall not be in a formulaic or check listed format, but shall be a detailed narrative reflecting an analysis specific to the student that fully explains why clear and convincing evidence supports the conclusion that the student is guilty of any school infraction as well as the principal or superintendent’s reasoning in concluding that the student’s conduct was so threatening that the student’s continued presence in school would have a substantial detrimental effect on the general welfare of the school, including a description of all relevant evidence and the specific nexus between the evidence and the conclusions. Any decision shall notify the student of any applicable appeal rights and relevant timelines. Any discipline determined at hearing shall remain in effect prior to any appeal decision by the superintendent or commissioner of elementary and secondary education.

(7) A student who has been excluded for a period in excess of 10 school days in one school year may appeal the last applicable decision to the commissioner of elementary and secondary education within 30 calendar days of the school district’s final decision. Upon being served with a notice of appeal, the school district shall provide the commissioner and the student with a complete copy of the hearing record within 5 days of its receipt of the notice of appeal. All written submissions by the student must be filed by regular mail with the commissioner within 20 calendar days of the student’s receipt of the complete copy of the hearing record. The commissioner shall forward a copy of the student’s submission to the school principal or school district within 3 days of receipt. All submissions by the school district must be

submitted and served on the student within 10 calendar days of its receipt of the written submissions by the student. The decision of the school district may be implemented during the appeal to the commissioner.

(8) In an appeal under this section, the commissioner may affirm the decision of the school district or may reverse or modify the decision if the rights of the student have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(a) in violation of constitutional provisions;

(b) in excess of the statutory authority or jurisdiction of the school district;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) unsupported by substantial evidence in view of the entire record submitted;

(f) arbitrary or capricious; or,

(g) the disposition, based on the facts determined:

i. does not adequately reflect consideration of the factors listed in subsection (5) of this section; or,

ii. is excessive or unreasonable, and is unnecessary to protect the safety of other students or school staff.

(9) The commissioner shall make a final decision based upon the record. The commissioner shall issue a decision within 20 calendar days of receiving the entire record and the parties' written submission on appeal.

(10) Nothing in this section shall limit any other available source of review of a decision of the principal, superintendent, school committee, or commissioner.

(11) The Commissioner shall, consistent with this section, devise and issue detailed procedural rules governing the conduct of appeals required under this section, including informal appeal processes designed to reasonably address practical problems and prevent suspension and expulsion. Explanatory comments accompanying rules shall be designed to explain due process requirements and the educational importance of procedural fairness, as well as to promote fairness and uniformity between schools and districts. The Commissioner shall devise a simple appeal form to facilitate students' use of procedures set forth herein.

(12) To the extent that any school district chooses to provide alternative education to any student excluded from school in accordance with §§ 37H and 37H½, G.L. c. 76, §17, or any other source of authority it shall do so in a manner consistent with the academic standards and curriculum frameworks established for all students under G.L. c. 69, §§ 1D and 1E.

(13) Each superintendent shall notify the commissioner of any disciplinary exclusion of any student from school and shall report to the commissioner the opportunities for alternative education provided to the student. The commissioner shall file a report on an annual basis with the joint committee on education, arts and humanities concerning the number of disciplinary exclusions in public schools, the duration of each exclusion, the reason for each exclusion, the alternative education options provided to students and the number of students re-admitted under the provisions of this section. Each superintendent shall ensure that the reporting of data on disciplinary exclusions shall be made on an annual basis to the state and to the public. To ensure consistency with federal reporting requirements, as part of the annual public reports required by this Act, both the superintendent and commissioner shall collect and report publicly the disaggregated school discipline data at the state and district level for all students, including those not identified as having a disability, by all the categories currently required by 20 U.S.C. § 1418.

SECTION 1. Chapter 76 of the Massachusetts General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking Section 17 and inserting in place thereof the following section:—

Chapter 76: Section 17. Hearing prerequisite to exclusion

Section 17. A school committee shall not exclude a pupil from the public schools for any period in excess of 90 school days and may not exclude a pupil for alleged misconduct without first giving him and his parent or guardian an opportunity to be heard in accordance with G.L. c. 71, Section 37H¾.